

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
BRIEF**

77-6092

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IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

SNEAKER CIRCUS, INC., BLAZER SPORTS INTERNATIONAL, INC., and BOB WOLF ASSOCIATES, INC.,

Plaintiffs-Appellants,

—against—

JIMMY CARTER, President of the United States,
ROBERT S. STRAUSS, Special Representative for
Trade Negotiations, STEPHEN J. LANDE, Deputy
Special Representative for Trade Negotiations, and
UNITED STATES INTERNATIONAL TRADE COMMISSION,

Defendants-Appellees.

**On Appeal From the United States District Court For the
Eastern District of New York**

**SUPPLEMENTAL BRIEF FOR
PLAINTIFFS-APPELLANTS**

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SUPPLEMENTAL BRIEF FOR PLAINTIFFS-APPELLANTS.

On Monday, June 13, 1977 the Court below amended its decision and order from which this appeal is taken. The language added by that amendment, quoted below, constitutes a recognition that 19 U.S.C. 1582 was not designed to confer jurisdiction to the Customs Court over an action such as the case at bar, and an attempt by the Court to legislate such coverage.

A copy of the entire decision and order of the Court below, as amended, is included in a supplemental Appendix. The language added to the decision and order by the amendment is as follows:

"If plaintiffs argument were to be accepted then the Congressional intent in granting exclusive jurisdiction to the Customs Court would be frustrated. The argument could always be made (especially at a similarly premature stage of the proceedings) that the limits imposed by any quota - whether unilaterally imposed or negotiated - might never be exceeded and therefore the Customs Court might never have jurisdiction. If this argument were sufficient to vest juris-

diction in the District Court, it would create a loophole so large that it would entirely negate the Congressional desire to create in the Customs Court a 'complete system of corrective justice with respect to matters arising under the customs laws.' J. C. Penney, supra at 65 citing Cottman Co. v. Dailey, 94 F. 2d 85, 88 (4th Cir. 1938)."

Appellants do not concede the existence of a "loophole" in the statute nor that a "loophole" would be created by finding that the District Court has jurisdiction of the action. The contention of appellants is that the plain language of § 1582 is demonstrative that Congress never intended that the Customs Court have jurisdiction over issues arising from factual circumstances as in this action where no protest has been or ever can be filed.

However, if there is such a "loophole", it is not created by appellants argument; it exists in the statute and it is not the province of the District Court to legislate coverage of that deficiency. U.S. v. Boneparth, 456 F. 2d 497 (2nd Cir. 1972); U.S. v. Cooper Corp., 312 U.S. 600 (1940); U.S. v. American - Foreign SS. Corp., 363 U.S. 685 (1959). In U.S. v. Cooper Corp. the Court stated at page 605:

"But it is not our function to engraft on a statute additions which we think the legislature logically might or should have made."

The language of § 1582 is clear that the only issues over which the Customs Court may exercise its jurisdiction are those arising from factual situations where the Customs Service is able to act administratively whether in connection with the imposition of tariffs or the prevention of entry or the like, so that the opportunity to institute protest procedure over those

administrative acts is available. The wellspring giving rise to Customs Court jurisdiction, whatever the ultimate issue, is the administrative actions of officials of the Customs Service.

The difficulty of the determination of the Court below is reflected in the language of amendment. The Court acknowledges its recognition of the problem in conferring Customs Court jurisdiction over an action where the Customs Service cannot act and a protest cannot be filed. The argument that the action is not ripe or is "pr" for Customs Court jurisdiction begs the question. The is that § 1582, the only statute describing the area of the jurisdiction of the Customs Court, simply was not designed to cover a situation where no protest reasonably could ever be filed. If that design is inadequate it is within the power of Congress only to remedy the situation.

CONCLUSION

For the reasons stated above, the order of the Court below should in all respects be reversed.

Respectfully submitted,

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